

REMARKS

In light of the arguments presented herein, Applicant submits that claims 1-21, 23 and 24 pending in the above-identified patent application are in allowable form. Applicant has amended claims 1-3 herein. No new matter has been added by way of the amendments herein. Reconsideration and allowance of all pending claims are therefore respectfully requested.

It is to be understood that Applicant does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter, as recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing this response.

At page 2 of the Advisory Action, the Examiner maintains the rejections of all claims, saying that the amendments in the previous response to the Final Office Action, dated and filed June 22, 2009, did not place the application in condition for allowance. Specifically, the Examiner alleges that US Patent No. 5,873,882 to Straub et al., (hereinafter "Straub"), discloses a working head that cooperates with a transport screw to shear thrombi and emboli as required by claims 1 and 2. Applicant has amended independent claims 1-3 herein to overcome the rejections.

As amended, claims 1-3 require "wherein the rotation of the transport screw produces relative movement with the lateral opening of the working head to form a shearing region for shearing and comminuting materials or aspirated and/or detached thrombi and emboli penetrating between the edges of the transport screw and the lateral opening of the working head." For at least the following reasons, Applicant submits that Straub does not disclose or suggest the above-quoted feature.

In Straub, stator 14 is fastened to tubular flexible sheath 22, and rotor 16 is connected to the flexible drive shaft 32. External rotor 16 rotates at the same speed as flexible drive shaft 32 because it "is fixed to [the rotor 16] in terms of rotation" (see column 4 lines 2-25 and Fig. 7 of Straub). Importantly, rotor 16 rotates externally and stator 14, which is disposed internally and within rotor 16, remains stationary. There is no cutting action in the Straub device between the drive shaft 32 and the rotor 16 or stator 14. Rather, it is the cutting edges of stator 14 and rotor 16 that cut stenoses and blood clots. "Cutting edges of this type are in each case arranged in both slots 14b, 14c; 16b, 16c . . ." (See FIG. 5 and column 4 lines 23-25 of Straub). Drive shaft 32 is "designed as a conveyor worm or conveyor screw to convey the deposits, which have been

dislodged by the cutting tool 14, 16” (see column 4 lines 5-8 of Straub). Therefore, the conveyor screw of the drive shaft 32 does not participate in shearing deposits, but only conveys them.

In contrast, claims 1-3 require rotation of the transport screw to produce relative movement with the lateral opening 14a-14q of the working head to form a shearing region for shearing and comminuting materials or aspirated and/or detached thrombi and emboli penetrating between the edges of the transport screw and the lateral opening of the working head. By way of example, claims 1-3 may cover a system in which shearing of emboli and thrombi as a result of shearing action occurs between the lateral opening 14a-14q of the working head 11 (the stator) and the edges or periphery of the transport screw 13 (see paragraph [0071] and FIGS. 2 and 3 of Applicant’s application). In Straub, shearing occurs only at the cutting edges of the rotor 16 and the stator 14. As mentioned above, the transport screw of the drive shaft 32 of Straub is used only to convey deposits, and do not act with either the rotor 16 or stator 14 to shear anything. With these fundamental differences in view, claims 1-3 are not anticipated by Straub. Therefore, the Examiner is respectfully requested to withdraw the rejections.

Each of claims 5-22 and 23-24 ultimately depend from claim 1, and each includes the features of claim 1, and as each recites additional patentable subject matter, the subject dependent claims are therefore also patentable. Claim 4 depends from claim 3, includes the features of claim 3, recites additional patentable subject matter, and is therefore patentable. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1-21 and 23-24.

Conclusion

Applicant submits that all claims presently pending in the application are in condition for allowance. Early and favorable action is earnestly solicited. If the Examiner believes that there are unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Matthew Dernier, Esq., at (732) 634-7634 so that appropriate arrangements can be made for the resolution of such issues as expeditiously as possible.

The fee for a two-month extension of time and RCE is included herewith. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Dated: September 23, 2009

Respectfully submitted,

By: s/Matthew B. Dernier/
Matthew B. Dernier
Registration No.: 40,989
GIBSON & DERNIER LLP
900 Route 9 North
Woodbridge, New Jersey 07095
Telephone (732) 634-7634
Attorneys for Applicant

516-12_U5US_Response_to_AA_07-06-09.doc